

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

_____)	
NEIL HUMPHREY,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 03-1236-A
)	
CAROLYN ELIZABETH HUMPHREY,)	
)	
Respondent.)	
_____)	

ORDER

This matter comes before the Court on remand from the Fourth Circuit Court of Appeals. Humphrey v. Humphrey, 434 F.3d 243 (4th Cir. 2006). The Fourth Circuit found that this Court applied the incorrect burden of proof when it said that "Mr. Humphrey has the burden in this case to show *beyond a reasonable doubt* that these children were habitually residing in England at the time that they were taken." Id. at 246 (quoting J.A. 186-88). This Court inadvertently stated that is was applying the "beyond a reasonable doubt" burden of proof when it was actually applying the "preponderance of the evidence" burden of proof.

Nevertheless, the Court has reviewed the evidence *de novo* and applied the preponderance of the evidence burden of proof in its review. The Court finds that Petitioner has the burden to show by the preponderance of the evidence that these children

were habitually residing in England at the time that they were taken. The Court finds that Petitioner's evidence falls short of showing that, and the evidence tips on Respondent's side as to what the habitual residence of the children was when they left England and returned to the United States. It is hereby

ORDERED that this petition is DISMISSED because the evidence does not show that Petitioner is entitled to such relief.

/s/

CLAUDE M. HILTON
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
April 10, 2006